

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,) CASE NO. 8:04CR244
Plaintiff,)
vs.)
ROBERTO ALBARADO-LEON,) TENTATIVE FINDINGS
Defendant.)

The Court has received the Presentence Investigation Report ("PSR") in this case.

The parties have not objected to the PSR. See Order on Sentencing Schedule, ¶ 6. The government adopted the PSR. (Filing No. 100.) The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The plea agreement includes a provision pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) for a specific drug quantity and base offense level 34. The PSR reflects a higher drug quantity and reflects a base offense level of 36. However, because the Defendant has received a mitigating role adjustment, his base offense level is ultimately 30 and the discrepancy between the plea agreement and the PSR is rendered moot. For this reason and because the parties have not objected to the PSR, the Court will adopt the findings set out in the PSR.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 29th day of August, 2005.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge